

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE CITY OF SAINT PAUL

In the Matter of All Licenses Held by  
DRJ, Inc., d/b/a Diva's Overtime Lounge

**ORDER REGARDING PRODUCTION  
OF SURVEILLANCE VIDEO**

A prehearing conference was held in the above-captioned matter by telephone on July 31, 2006, at 3:30 p.m., with respect to the Licensee's request for a subpoena for a copy of a surveillance video and the City's objection to issuance of the subpoena. Marshall H. Tanick, Attorney at Law, Mansfield, Tanick & Cohen, P.A., 220 South Sixth Street, Suite 1700, Minneapolis, MN 55402-4511, participated on behalf of the Licensee, DRJ, Inc. d/b/a Diva's Overtime Lounge (DRJ). Rachel Gunderson, Assistant City Attorney, 15 West Kellogg Blvd., Suite 400, Saint Paul, MN 55102, participated on behalf of the City of St. Paul's Office of License, Inspections and Environmental Protection (LIEP). Reyne M. Rofuth, Senior Saint Paul City Attorney, 15 West Kellogg Blvd., Suite 400, Saint Paul, MN 55102, participated on behalf of the Saint Paul Police Department. Gary A. Davis, Assistant Ramsey County Attorney, 50 West Kellogg Blvd., Suite 560, Saint Paul, MN 55102, participated on behalf of Ramsey County.

Based upon the record and proceedings in this matter, and for the reasons set forth in the attached Memorandum, IT IS HEREBY ORDERED as follows:

1. The City shall, as soon as possible, provide counsel for the Licensee with a copy of the portion of the Licensee's surveillance video relating to April 7 – April 8, 2006. To the extent possible, the copy shall be provided by noon on August 1, 2006.
2. By noon on August 2, 2006, counsel for the Licensee shall inform the Administrative Law Judge and counsel for LIEP whether the Licensee has been afforded an adequate opportunity to review the surveillance video prior to the August 3, 2006, hearing. If so, the hearing will proceed as scheduled on August 3, 2006. If not, the hearing shall be continued to Wednesday, August 16, 2006, commencing at 9:30 a.m. in a location in Saint Paul to be arranged by counsel for LIEP.

Dated: July 31, 2006.

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

## **MEMORANDUM**

The City contends in this matter that the Licensee permitted after-hours display and/or consumption of alcohol on its premises on April 8, 2006, and that its licenses should be subjected to adverse action as a result. The Licensee had a video tape surveillance system in place in April 2006 and thereafter. After a homicide occurred on the Licensee's premises on July 13, 2006, the St. Paul Police Department seized the Licensee's computer hard drive containing the Licensee's surveillance video. The Licensee contends that the hard drive includes not only surveillance video relating to July 13, 2006, but also surveillance video relating to April 8, 2006.

The Licensee sought and obtained a subpoena from the Chief Administrative Law Judge for production by the St. Paul Police Department of a copy of data from the computer hard drive relating to April 8, 2006. The City objected to the subpoena on the grounds that the video constitutes "confidential" or "protected nonpublic" data from an active criminal investigation under Minn. Stat. § 13.82, subd. 7, and cannot be released without a motion and order under Minn. Stat. § 13.03, subd. 6. The Licensee subsequently filed a request for an order enforcing the subpoena, and argument was heard during a telephone conference call held on July 31, 2006. During the conference call, counsel for the City and for Ramsey County indicated that it was possible to copy the portion of the surveillance video relating to April 7 – 8, 2006, that portion of the video did not relate to the homicide investigation, and disclosure thus would not compromise the criminal investigation of the July homicide. The City and County indicated that an Order is necessary before the disclosure of the surveillance video could occur, but they did not otherwise object to disclosure or contend that the video lacked relevance in this proceeding.

The Administrative Law Judge concludes, in accordance with Minn. Stat. § 13.03, subd. 6, that the portion of the Licensee's surveillance video relating to April 7 - 8, 2006, is discoverable or releasable in this matter because it is potentially relevant to the issue of whether after-hours consumption occurred on that date, and that the benefit to the Licensee of such disclosure outweighs any harm to the confidentiality interests of the City or County or of persons who are the subject of the video. Accordingly, the City has been directed to produce a copy of that portion of the video to the Licensee by noon tomorrow, if possible. However, because the City employee who would be responsible for such copying was out of the office today, the City was unable to offer assurance that the copy could be produced in that time frame. Should it not be possible to produce the copy that quickly, or should the Licensee lack an adequate opportunity to review the video prior to the hearing currently scheduled for August 3, the Licensee will inform the Administrative Law Judge and the City by noon on August 2, and the hearing will be continued to August 16, 2006.

**B.L.N.**